

109TH CONGRESS
2D SESSION

S. 2412

To address homeland security issues relating to first responders, the Federal Bureau of Investigation, the use of technology, Federal, State, and local coordination, and critical infrastructure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2006

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To address homeland security issues relating to first responders, the Federal Bureau of Investigation, the use of technology, Federal, State, and local coordination, and critical infrastructure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “9/11 Commission Rec-
5 ommendations Implementation Act of 2006”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—ENHANCING LAW ENFORCEMENT AND FIRST RESPONDERS

Subtitle A—First Responders

- Sec. 101. Findings.
- Sec. 102. Restoration of justice assistance funding.
- Sec. 103. COPS authorization of appropriations.
- Sec. 104. State and local first responders authorization of appropriations.

Subtitle B—Federal Bureau of Investigation Enhancement

- Sec. 120. Findings.
- Sec. 121. Authorization for more agents.

Subtitle C—Utilizing Technology to Prevent and Respond to Terrorist Attacks and Natural Disasters

- Sec. 141. Communications.
- Sec. 142. Terrorist watch lists.

Subtitle D—Improving Planning and Coordination Among Federal, State, and Local First Responders

- Sec. 161. National response plan.

TITLE II—CRITICAL INFRASTRUCTURE PROTECTION

Subtitle A—Comprehensive Critical Infrastructure Vulnerability Assessments

- Sec. 201. Threat reductions.

Subtitle B—Rail Security

- Sec. 221. Rail transportation security risk assessment.
- Sec. 222. Rail security.
- Sec. 223. Study of foreign rail transport security programs.
- Sec. 224. Passenger, baggage, and cargo screening.
- Sec. 225. Certain personnel limitations not to apply.
- Sec. 226. Fire and life-safety improvements.
- Sec. 227. Memorandum of understanding.
- Sec. 228. Amtrak plan to assist families of passengers involved in rail passenger accidents.
- Sec. 229. Systemwide Amtrak security upgrades.
- Sec. 230. Freight and passenger rail security upgrades.
- Sec. 231. Rail security research and development.
- Sec. 232. Welded rail and tank car safety improvements.
- Sec. 233. Northern border rail passenger report.
- Sec. 234. Whistleblower protection program.

Subtitle C—Transportation of Hazardous Materials by Rail

- Sec. 241. Findings.
- Sec. 242. Definitions.
- Sec. 243. Regulations for transport of extremely hazardous materials.
- Sec. 244. Safety training.
- Sec. 245. Research and development.
- Sec. 246. Whistleblower protection.
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Subtitle D—Chemical Plant Security

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Subtitle E—Seaport Protection

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Sec. 282. Port security grant funding.

Subtitle F—Bag Screening

Sec. 291. Checked bag screening.

1 **TITLE I—ENHANCING LAW EN-**
 2 **FORCEMENT AND FIRST RE-**
 3 **SPONDERS**

4 **Subtitle A—First Responders**

5 **SEC. 101. FINDINGS.**

6 Congress makes the following findings:

7 (1) In a report entitled “Emergency First Re-
 8 sponders: Drastically Underfunded, Dangerously
 9 Unprepared”, an independent task force sponsored
 10 by the Council on Foreign Relations found that
 11 “America’s local emergency responders will always
 12 be the first to confront a terrorist incident and will
 13 play the central role in managing its immediate con-
 14 sequences. Their efforts in the first minutes and
 15 hours following an attack will be critical to saving
 16 lives, establishing order, and preventing mass panic.
 17 The United States has both a responsibility and a
 18 critical need to provide them with the equipment,
 19 training, and other resources necessary to do their
 20 jobs safely and effectively.”.

1 (2) The task force further concluded that many
2 State and local emergency responders, including po-
3 lice officers and firefighters, lack the equipment and
4 training needed to respond effectively to a terrorist
5 attack involving weapons of mass destruction.

6 (3) The Federal Government has a responsi-
7 bility to ensure that the people of the United States
8 are protected to the greatest possible extent against
9 a terrorist attack, especially an attack that utilizes
10 nuclear, chemical, biological, or radiological weapons,
11 and consequently, the Federal Government has a
12 critical responsibility to address the equipment,
13 training, and other needs of State and local first re-
14 sponders.

15 **SEC. 102. RESTORATION OF JUSTICE ASSISTANCE FUND-**
16 **ING.**

17 (a) SENSE OF CONGRESS.—It is the sense of Con-
18 gress that the President should request in the annual
19 budget proposal, and Congress should appropriate, the full
20 amount authorized to be appropriated in subsection (b).

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated for the Edward Byrne
23 Memorial Justice Assistance Grant Program
24 \$900,000,000 for fiscal year 2007.

1 **SEC. 103. COPS AUTHORIZATION OF APPROPRIATIONS.**

2 In addition to any other amounts authorized to be
3 appropriated, there are authorized to be appropriated to
4 the Office of Community Oriented Policing Services
5 \$1,150,000,000, for fiscal year 2007.

6 **SEC. 104. STATE AND LOCAL FIRST RESPONDERS AUTHOR-**
7 **IZATION OF APPROPRIATIONS.**

8 In addition to any other amounts authorized to be
9 appropriated, there are authorized to be appropriated, for
10 each of the fiscal years 2007 through 2017—

11 (1) \$1,000,000,000 for the State Homeland Se-
12 curity Grant Program;

13 (2) \$1,000,000,000 for the Urban Area Secu-
14 rity Initiative Grant Program; and

15 (3) \$600,000,000 for the Law Enforcement
16 Terrorism Prevention Program.

17 **Subtitle B—Federal Bureau of**
18 **Investigation Enhancement**

19 **SEC. 120. FINDINGS.**

20 Congress finds the following:

21 (1) Throughout its history, the Federal Bureau
22 of Investigation has been an integral part of anti-
23 crime investigatory efforts in the United States.

24 (2) While the Federal Bureau of Investigation
25 has increased its overall field agent numbers by
26 more than 1,000 since pre-September 11, 2001, lev-

1 els, it has increased its counter-terror agents by
2 more than 2,000. While this staffing-up of increased
3 resources for counter-terror investigations is nec-
4 essary and proper, it has had the unintended con-
5 sequence of precluding the Federal Bureau of Inves-
6 tigation from adequately and satisfactorily dis-
7 charging its traditional anti-crime investigatory ef-
8 forts.

9 (3) The shift of the focus of the Federal Bu-
10 reau of Investigation to counterterrorism has re-
11 duced the Bureau's involvement in traditional crime
12 investigations, including—

13 (A) fewer agents to the successful High In-
14 tensity Drug Trafficking Area task forces;

15 (B) fewer violent crime cases, as the Bu-
16 reau has reduced the number of agents com-
17 mitted to Federal, State, and local task forces
18 like the Safe Streets and Violent Crime Task
19 Forces; and

20 (C) fewer agents handling bank robbery
21 and white collar crimes, which involve technical
22 areas of investigative expertise that State and
23 locals often lack.

24 (4) Before September 11, 2001, the Federal
25 Bureau of Investigation had 7,738 field agents ful-

1 filling traditional anti-crime efforts. The President
2 proposed a fiscal year 2006 budget with less than
3 6,700 field agents fulfilling these same functions.

4 (5) The Federal Bureau of Investigation is thus
5 faced with a gap of 1,000 field agents in its tradi-
6 tional anti-crime function, compromising the inves-
7 tigation the Federal Bureau of Investigation is able
8 to undertake and to assist in conducting.

9 (6) The traditional anti-crime investigations of
10 the Federal Bureau of Investigation complement and
11 assist investigations by State and local law enforce-
12 ment around the country.

13 (7) Through direct assistance and various joint
14 task forces, the Federal Bureau of Investigation pro-
15 vides invaluable expertise and resources to help
16 State and local law enforcement agencies combat
17 criminal enterprises impacting their local commu-
18 nities.

19 (8) The post-September 11, 2001, reprogram-
20 ming of Federal Bureau of Investigation agents
21 from criminal to counterterrorism investigations is
22 occurring at the many State and local agencies that
23 are facing tough budget cuts that is reducing their
24 capacity to fight crime.

1 (9) In a recent survey, 27 of 44 major urban
2 police departments surveyed are experiencing a “cop
3 crunch”. Cleveland, Ohio, has lost 250 officers in
4 2004, 15 percent of its force. New York City has
5 lost 3,400 over the last 3 years. Pittsburgh, Penn-
6 sylvania, has lost ¼ of its force, and Philadelphia
7 has lost 2,000 officers.

8 (10) Compounding the lack of local revenue
9 many local jurisdictions are faced with since Sep-
10 tember 11, 2001, Federal financial assistance to
11 local law enforcement has been reduced every year
12 for the past 4 years.

13 (11) The Federal Bureau of Investigation is
14 charged with preventing terrorism and fighting tra-
15 ditional crime. In order for the Federal Bureau of
16 Investigation to attain both critical goals, the Fed-
17 eral Bureau of Investigation needs an additional
18 1,000 agents to do the job.

19 **SEC. 121. AUTHORIZATION FOR MORE AGENTS.**

20 There are authorized to be appropriated
21 \$160,000,000 for each of the fiscal years 2007 through
22 2011 to fund 1,000 Federal Bureau of Investigation field
23 agents, in addition to the number of Federal Bureau of
24 Investigation field agents serving on the date of enactment
25 of this Act.

1 **Subtitle C—Utilizing Technology to**
2 **Prevent and Respond to Ter-**
3 **rorist Attacks and Natural Dis-**
4 **asters**

5 **SEC. 141. COMMUNICATIONS.**

6 There are authorized to be appropriated
7 \$1,000,000,000 for each of the fiscal years 2007 through
8 2011, to the Office of Community Oriented Policy Services
9 for grants for interoperable communications technology.

10 **SEC. 142. TERRORIST WATCH LISTS.**

11 There are authorized to be appropriated \$50,000,000
12 for fiscal year 2007, to the Federal Bureau of Investiga-
13 tion for the consolidation of terrorist watch lists by the
14 Terrorist Screening Center.

15 **Subtitle D—Improving Planning**
16 **and Coordination Among Fed-**
17 **eral, State, and Local First Re-**
18 **sponders**

19 **SEC. 161. NATIONAL RESPONSE PLAN.**

20 (a) REPORT.—Not later than 180 days after the date
21 of enactment of this Act, the Secretary of Homeland Secu-
22 rity shall conduct a study and submit a report to Congress
23 regarding any failures related to the use of the national
24 response plan prepared under section 502(6) of the Home-
25 land Security Act of 2002 (6 U.S.C. 312(6)).

1 (b) UPDATE OF PLAN.—

2 (1) IN GENERAL.—Not later than the earlier of
3 the date that is 1 year after the date of enactment
4 of this Act or the date that is 180 days after the
5 submission of the report under subsection (a), the
6 Secretary of Homeland Security shall conduct a re-
7 view and update the national response plan prepared
8 under section 502(6) of the Homeland Security Act
9 of 2002 (6 U.S.C. 312(6)) to coordinate a response
10 within 8 to 24 hours after the occurrence of a nat-
11 ural disaster or terrorist attack, utilizing State and
12 local government resources.

13 (2) CONSULTATION.—In conducting the study
14 required by paragraph (1), the Secretary shall form
15 a working group consisting of State and local law
16 enforcement officials, State and local fire officials,
17 local paramedics and other State and local emer-
18 gency planners and practitioners as well as relevant
19 Federal officials.

1 **TITLE II—CRITICAL**
2 **INFRASTRUCTURE PROTECTION**
3 **Subtitle A—Comprehensive Critical**
4 **Infrastructure Vulnerability As-**
5 **essments**

6 **SEC. 201. THREAT REDUCTIONS.**

7 (a) IN GENERAL.—Not later than 1 year after the
8 date of enactment of this Act, the Secretary of Homeland
9 Security shall conduct a study of and submit to Congress
10 an unclassified report on the security vulnerability and a
11 comprehensive threat reduction recommendations for each
12 of the following areas:

- 13 (1) Financial markets.
14 (2) Chemical plants.
15 (3) Nuclear plants.
16 (4) Ports.
17 (5) Transportation infrastructure.
18 (6) Electricity grid.
19 (7) Communications Systems.
20 (8) Computer Networks.

21 (b) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated \$80,000,000 for fiscal
23 year 2007 to carry out this section.

Subtitle B—Rail Security

SEC. 221. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) IN GENERAL.—

(1) VULNERABILITY ASSESSMENT.—

(A) IN GENERAL.—The Under Secretary of Homeland Security for Border and Transportation Security, in consultation with the Secretary of Transportation, shall complete a vulnerability assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code).

(B) CONTENTS.—The assessment under subparagraph (A) shall include—

(i) identification and evaluation of critical assets and infrastructures;

(ii) identification of threats to those assets and infrastructures;

(iii) identification of vulnerabilities that are specific to the transportation of hazardous materials by railroad; and

(iv) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection

1 systems, procedural policies, communica-
2 tions systems, employee training, emer-
3 gency response planning, and any other
4 area identified by the assessment.

5 (C) EXISTING PRIVATE AND PUBLIC SEC-
6 TOR EFFORTS.—The assessment shall take into
7 account actions taken or planned by both public
8 and private entities to address identified secu-
9 rity issues and assess the effective integration
10 of such actions.

11 (2) RECOMMENDATIONS.—Based on the assess-
12 ment conducted under paragraph (1), the Under
13 Secretary, in consultation with the Secretary of
14 Transportation, shall develop prioritized rec-
15 ommendations for improving rail security, including
16 any recommendations the Under Secretary has for—

17 (A) improving the security of rail tunnels,
18 rail bridges, rail switching and car storage
19 areas, other rail infrastructure and facilities, in-
20 formation systems, and other areas identified
21 by the Under Secretary as posing significant
22 rail-related risks to public safety and the move-
23 ment of interstate commerce, taking into ac-
24 count the impact that any proposed security

1 measure might have on the provision of rail
2 service;

3 (B) deploying equipment to detect explo-
4 sives and hazardous chemical, biological, and
5 radioactive substances, and any appropriate
6 countermeasures;

7 (C) training employees in terrorism pre-
8 vention, passenger evacuation, and response ac-
9 tivities;

10 (D) conducting public outreach campaigns
11 on passenger railroads;

12 (E) deploying surveillance equipment; and

13 (F) identifying the immediate and long-
14 term costs of measures that may be required to
15 address those risks.

16 (3) PLANS.—The report required by subsection
17 (c) shall include—

18 (A) a plan, developed in consultation with
19 the freight and intercity passenger railroads,
20 and State and local governments, for the gov-
21 ernment to provide increased security support
22 at high or severe threat levels of alert; and

23 (B) a plan for coordinating rail security
24 initiatives undertaken by the public and private
25 sectors.

1 (b) CONSULTATION; USE OF EXISTING RE-
2 SOURCES.—In carrying out the assessment required by
3 subsection (a)(1), the Under Secretary of Homeland Secu-
4 rity for Border and Transportation Security shall consult
5 with rail management, rail labor, owners or lessors of rail
6 cars used to transport hazardous materials, first respond-
7 ers, shippers of hazardous materials, public safety officials
8 (including those within other agencies and offices within
9 the Department of Homeland Security), and other rel-
10 evant parties.

11 (c) REPORT.—

12 (1) CONTENTS.—Not later than 180 days after
13 the date of enactment of this Act, the Under Sec-
14 retary of Homeland Security for Border and Trans-
15 portation Security shall submit to the Committee on
16 Commerce, Science, and Transportation of the Sen-
17 ate and the Committee on Transportation and Infra-
18 structure of the House of Representatives a report
19 containing the assessment and prioritized rec-
20 ommendations required by subsection (a) and an es-
21 timate of the cost to implement such recommenda-
22 tions.

23 (2) FORMAT.—The Under Secretary may sub-
24 mit the report in both classified and redacted for-

1 mats if the Under Secretary determines that such
2 action is appropriate or necessary.

3 (d) 2-YEAR UPDATES.—The Under Secretary of
4 Homeland Security for Border and Transportation Secu-
5 rity, in consultation with the Secretary of Transportation,
6 shall update the assessment and recommendations every
7 2 years and submit to the committees named in subsection
8 (c)(1) a report, which may be submitted in both classified
9 and redacted formats, containing the updated assessment
10 and recommendations.

11 (e) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated to the Under Secretary
13 of Homeland Security for Border and Transportation Se-
14 curity \$5,000,000 for fiscal year 2007 for the purpose of
15 carrying out this section.

16 **SEC. 222. RAIL SECURITY.**

17 (a) RAIL POLICE OFFICERS.—Section 28101 of title
18 49, United States Code, is amended by striking “the rail
19 carrier” each place it appears and inserting “any rail car-
20 rier”.

21 (b) REVIEW OF RAIL REGULATIONS.—Not later than
22 1 year after the date of enactment of this Act, the Sec-
23 retary of Transportation, in consultation with the Under
24 Secretary of Homeland Security for Border and Transpor-
25 tation Security, shall review the rail regulations of the De-

1 partment of Transportation for the purpose of identifying
2 areas in which those regulations need to be revised to im-
3 prove rail security.

4 **SEC. 223. STUDY OF FOREIGN RAIL TRANSPORT SECURITY**
5 **PROGRAMS.**

6 (a) REQUIREMENT FOR STUDY.—Not later than 1
7 year after the date of enactment of this Act, the Comp-
8 troller General of the United States shall complete a study
9 of the rail passenger transportation security programs
10 that are carried out for rail transportation systems in
11 Japan, member nations of the European Union, and other
12 foreign countries.

13 (b) PURPOSE.—The purpose of the study completed
14 under subsection (a) shall be to identify effective rail
15 transportation security measures that are in use in foreign
16 rail transportation systems, including innovative measures
17 and screening procedures determined effective.

18 (c) REPORT.—The Comptroller General shall submit
19 a report on the results of the study completed under sub-
20 section (a) to the Committee on Commerce, Science, and
21 Transportation of the Senate and the Committee on
22 Transportation and Infrastructure of the House of Rep-
23 resentatives. The report shall include the Comptroller
24 General's assessment regarding whether it is feasible to
25 implement within the United States any of the same or

1 similar security measures that are determined effective
2 under the study.

3 **SEC. 224. PASSENGER, BAGGAGE, AND CARGO SCREENING.**

4 (a) REQUIREMENT FOR STUDY AND REPORT.—The
5 Under Secretary of Homeland Security for Border and
6 Transportation Security, in cooperation with the Secretary
7 of Transportation, shall—

8 (1) analyze the cost and feasibility of requiring
9 security screening for passengers, baggage, and
10 cargo on passenger trains; and

11 (2) not later than 1 year after the date of en-
12 actment of this Act, report the results of the study,
13 together with any recommendations that the Under
14 Secretary may have for implementing a rail security
15 screening program to the Committee on Commerce,
16 Science, and Transportation of the Senate and the
17 Committee on Transportation and Infrastructure of
18 the House of Representatives.

19 (b) PILOT PROGRAM.—

20 (1) IN GENERAL.—As part of the study under
21 subsection (a), the Under Secretary shall conduct a
22 pilot program of random security screening of pas-
23 sengers and baggage at 5 passenger rail stations
24 served by Amtrak that are selected by the Under
25 Secretary.

1 (2) CONDUCT OF PROGRAM.—In conducting the
2 pilot program, the Under Secretary shall—

3 (A) test a wide range of explosives detec-
4 tion technologies, devices, and methods;

5 (B) require that intercity rail passengers
6 produce government-issued photographic identi-
7 fication that matches the name on the pas-
8 senger's tickets prior to boarding trains; and

9 (C) attempt to give preference to locations
10 at the highest risk of terrorist attack and
11 achieve a distribution of participating train sta-
12 tions in terms of geographic location, size, pas-
13 senger volume, and whether the station is used
14 by commuter rail passengers as well as Amtrak
15 passengers.

16 (c) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Under Secretary
18 of Homeland Security for Border and Transportation Se-
19 curity \$5,000,000 for fiscal year 2007 to carry out this
20 section.

21 **SEC. 225. CERTAIN PERSONNEL LIMITATIONS NOT TO**
22 **APPLY.**

23 Any statutory limitation on the number of employees
24 in the Transportation Security Administration of the De-
25 partment of Transportation, before or after its transfer

1 to the Department of Homeland Security, shall not apply
 2 to the extent that any such employees are responsible for
 3 implementing the provisions of this subtitle.

4 **SEC. 226. FIRE AND LIFE-SAFETY IMPROVEMENTS.**

5 (a) LIFE-SAFETY NEEDS.—The Secretary of Trans-
 6 portation is authorized to make grants to Amtrak for the
 7 purpose of making fire and life-safety improvements to
 8 Amtrak tunnels on the Northeast Corridor in New York,
 9 New York, Baltimore, Maryland, and Washington, Dis-
 10 trict of Columbia.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 12 are authorized to be appropriated to the Secretary of
 13 Transportation for the purposes of carrying out subsection
 14 (a) the following amounts:

15 (1) For the 6 New York tunnels to provide ven-
 16 tilation, electrical, and fire safety technology up-
 17 grades, emergency communication and lighting sys-
 18 tems, and emergency access and egress for pas-
 19 sengers—

20 (A) \$100,000,000 for fiscal year 2007;

21 (B) \$100,000,000 for fiscal year 2008;

22 (C) \$100,000,000 for fiscal year 2009;

23 (D) \$100,000,000 for fiscal year 2010; and

24 (E) \$170,000,000 for fiscal year 2011.

1 (2) For the Baltimore & Potomac tunnel and
 2 the Union tunnel, together, to provide adequate
 3 drainage, ventilation, communication, lighting, and
 4 passenger egress upgrades—

5 (A) \$10,000,000 for fiscal year 2007;

6 (B) \$10,000,000 for fiscal year 2008;

7 (C) \$10,000,000 for fiscal year 2009;

8 (D) \$10,000,000 for fiscal year 2010; and

9 (E) \$17,000,000 for fiscal year 2011.

10 (3) For the Washington, District of Columbia,
 11 Union Station tunnels to improve ventilation, com-
 12 munication, lighting, and passenger egress up-
 13 grades—

14 (A) \$8,000,000 for fiscal year 2007;

15 (B) \$8,000,000 for fiscal year 2008;

16 (C) \$8,000,000 for fiscal year 2009;

17 (D) \$8,000,000 for fiscal year 2010; and

18 (E) \$8,000,000 for fiscal year 2011.

19 (c) INFRASTRUCTURE UPGRADES.—There are au-
 20 thorized to be appropriated to the Secretary of Transpor-
 21 tation \$3,000,000 for fiscal year 2007 for the preliminary
 22 design of options for a new tunnel on a different alignment
 23 to augment the capacity of the Baltimore, Maryland, tun-
 24 nels.

1 (d) AVAILABILITY OF APPROPRIATED FUNDS.—

2 Amounts appropriated pursuant to this section shall re-
3 main available until expended.

4 (e) PLANS REQUIRED.—The Secretary of Transpor-
5 tation may not make amounts available to Amtrak for ob-
6 ligation or expenditure under subsection (a)—

7 (1) until Amtrak has submitted to the Sec-
8 retary, and the Secretary has approved, an engineer-
9 ing and financial plan for such projects; and

10 (2) unless, for each project funded pursuant to
11 this section, the Secretary has approved a project
12 management plan prepared by Amtrak addressing
13 appropriate project budget, construction schedule,
14 recipient staff organization, document control and
15 record keeping, change order procedure, quality con-
16 trol and assurance, periodic plan updates, periodic
17 status reports, and such other matters the Secretary
18 determines appropriate.

19 (f) REVIEW OF PLANS.—

20 (1) IN GENERAL.—The Secretary of Transpor-
21 tation shall complete the review of the plans re-
22 quired under subsection (e) and approve or dis-
23 approve the plans not later than 45 days after the
24 date on which each such plan is submitted by Am-
25 trak.

1 (2) DEFICIENT PLANS.—If the Secretary deter-
 2 mines that a plan is incomplete or deficient, the Sec-
 3 retary shall notify Amtrak of the incomplete items
 4 or deficiencies and Amtrak shall, not later than 30
 5 days after receiving such notification, submit a
 6 modified plan for the Secretary’s review.

7 (3) REVIEW OF MODIFIED PLANS.—Not later
 8 than 15 days after receiving additional information
 9 on items previously included in the plan, and not
 10 later than 45 days after receiving items newly in-
 11 cluded in a modified plan, the Secretary shall either
 12 approve the modified plan, or, if the Secretary finds
 13 the plan is still incomplete or deficient, the Secretary
 14 shall identify in writing to the Committee on Com-
 15 merce, Science, and Transportation of the Senate
 16 and the Committee on Transportation and Infra-
 17 structure of the House of Representatives the por-
 18 tions of the plan the Secretary finds incomplete or
 19 deficient, approve all other portions of the plan, obli-
 20 gate the funds associated with those other portions,
 21 and execute an agreement with Amtrak not later
 22 than 15 days thereafter on a process for resolving
 23 the remaining portions of the plan.

24 (g) FINANCIAL CONTRIBUTION FROM OTHER TUN-
 25 NEL USERS.—The Secretary shall, taking into account the

1 need for the timely completion of all portions of the tunnel
2 projects described in subsection (a)—

3 (1) consider the extent to which rail carriers
4 other than Amtrak use the tunnels;

5 (2) consider the feasibility of seeking a financial
6 contribution from those other rail carriers toward
7 the costs of the projects; and

8 (3) obtain financial contributions or commit-
9 ments from such other rail carriers at levels reflect-
10 ing the extent of their use of the tunnels, if feasible.

11 **SEC. 227. MEMORANDUM OF UNDERSTANDING.**

12 (a) MEMORANDUM OF UNDERSTANDING.—Not later
13 than 60 days after the date of enactment of this Act, the
14 Secretary of Transportation and the Secretary of Home-
15 land Security shall execute a memorandum of agreement
16 governing the roles and responsibilities of the Department
17 of Transportation and the Department of Homeland Secu-
18 rity, respectively, in addressing railroad transportation se-
19 curity matters, including the processes the departments
20 will follow to promote communications, efficiency, and
21 nonduplication of effort.

22 (b) RAIL SAFETY REGULATIONS.—Section 20103(a)
23 of title 49, United States Code, is amended by striking
24 “safety” the first place it appears, and inserting “safety,
25 including security,”.

1 **SEC. 228. AMTRAK PLAN TO ASSIST FAMILIES OF PAS-**
 2 **SENGERS INVOLVED IN RAIL PASSENGER AC-**
 3 **CIDENTS.**

4 (a) IN GENERAL.—Chapter 243 of title 49, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing new section:

7 **“§ 24316. Plan to address needs of families of pas-**
 8 **sengers involved in rail passenger acci-**
 9 **dents**

10 “(a) SUBMISSION OF PLAN.—Not later than 6
 11 months after the date of enactment of this section, Am-
 12 trak shall submit to the Chairman of the National Trans-
 13 portation Safety Board and the Secretary of Transpor-
 14 tation a plan for addressing the needs of the families of
 15 passengers involved in any rail passenger accident involv-
 16 ing an Amtrak intercity train and resulting in a loss of
 17 life.

18 “(b) CONTENTS OF PLANS.—The plan to be sub-
 19 mitted by Amtrak under subsection (a) shall include, at
 20 a minimum, the following:

21 “(1) A process by which Amtrak shall maintain
 22 and provide to the National Transportation Safety
 23 Board and the Secretary of Transportation, imme-
 24 diately upon request, a list (which is based on the
 25 best available information at the time of the request)
 26 of the names of the passengers aboard the train

1 (whether or not such names have been verified), and
2 will periodically update the list. The process shall in-
3 clude a procedure, with respect to unreserved trains
4 and passengers not holding reservations on other
5 trains, for Amtrak to use reasonable efforts to ascer-
6 tain the number and names of passengers aboard a
7 train involved in an accident.

8 “(2) A plan for creating and publicizing a reli-
9 able, toll-free telephone number within 4 hours after
10 such an accident occurs, and for providing staff, to
11 handle calls from the families of the passengers.

12 “(3) A process using suitably trained individ-
13 uals to notify the families of the passengers before
14 any public notice of the names of the passengers is
15 provided.

16 “(4) A process for providing the notice de-
17 scribed in paragraph (2) to the family of a pas-
18 senger as soon as Amtrak has verified that the pas-
19 senger was aboard the train (whether or not the
20 names of all of the passengers have been verified).

21 “(5) A process by which the family of each pas-
22 senger will be—

23 “(A) consulted about the disposition of all
24 remains and personal effects of the passenger
25 within Amtrak’s control;

1 “(B) notified that any possession of the
2 passenger within Amtrak’s control will be re-
3 turned to the family unless the possession is
4 needed for the accident investigation or any
5 criminal investigation; and

6 “(C) notified that any unclaimed posses-
7 sion of a passenger within Amtrak’s control will
8 be retained by the rail passenger carrier for at
9 least 18 months.

10 “(6) A process by which the treatment of the
11 families of nonrevenue passengers will be the same
12 as the treatment of the families of revenue pas-
13 sengers.

14 “(7) An assurance that Amtrak will provide
15 adequate training to its employees and agents to
16 meet the needs of survivors and family members fol-
17 lowing an accident.

18 “(c) USE OF INFORMATION.—The National Trans-
19 portation Safety Board, the Secretary of Transportation,
20 and Amtrak may not release to any person information
21 on a list obtained under subsection (b)(1) but may provide
22 information on the list about a passenger to the family
23 of the passenger to the extent that the Board or Amtrak
24 considers appropriate.

1 “(d) LIMITATION ON LIABILITY.—Amtrak shall not
 2 be liable for damages in any action brought in a Federal
 3 or State court arising out of the performance of Amtrak
 4 in preparing or providing a passenger list, or in providing
 5 information concerning a train reservation, under the plan
 6 submitted by Amtrak under subsection (b), unless such
 7 liability was caused by Amtrak’s conduct.

8 “(e) LIMITATION ON STATUTORY CONSTRUCTION.—
 9 Nothing in this section may be construed as limiting the
 10 actions that Amtrak may take, or the obligations that Am-
 11 trak may have, in providing assistance to the families of
 12 passengers involved in a rail passenger accident.

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated to the Secretary of
 15 Transportation for the use of Amtrak \$500,000 for fiscal
 16 year 2007 to carry out this section. Amounts appropriated
 17 pursuant to this subsection shall remain available until ex-
 18 pended.”.

19 (b) CONFORMING AMENDMENT.—The chapter anal-
 20 ysis for chapter 243 of title 49, United States Code, is
 21 amended by adding at the end the following:

“24316. Plan to address needs of families of passengers involved in rail pas-
 senger accidents.”.

22 **SEC. 229. SYSTEMWIDE AMTRAK SECURITY UPGRADES.**

23 (a) IN GENERAL.—Subject to subsection (c), the
 24 Under Secretary of Homeland Security for Border and

1 Transportation Security is authorized to make grants,
2 through the Secretary of Transportation, to Amtrak—

3 (1) to secure major tunnel access points and en-
4 sure tunnel integrity in New York, New York, Balti-
5 more, Maryland, and Washington, District of Co-
6 lumbia;

7 (2) to secure Amtrak trains;

8 (3) to secure Amtrak stations;

9 (4) to obtain a watch list identification system
10 approved by the Under Secretary;

11 (5) to obtain train tracking and interoperable
12 communications systems that are coordinated to the
13 maximum extent possible;

14 (6) to hire additional police and security offi-
15 cers, including canine units;

16 (7) to supplement salaries and benefits of au-
17 thorized sworn law enforcement personnel of the
18 Amtrak Police Department; and

19 (8) to expand emergency preparedness efforts.

20 (b) CONDITIONS.—The Secretary of Transportation
21 may not disburse funds to Amtrak under subsection (a)
22 unless the projects are contained in a systemwide security
23 plan approved by the Under Secretary, in consultation
24 with the Secretary of Transportation, and, for capital
25 projects, meet the requirements of section 226(e)(2). The

1 plan shall include appropriate measures to address secu-
 2 rity awareness, emergency response, and passenger evacu-
 3 ation training.

4 (c) **EQUITABLE GEOGRAPHIC ALLOCATION.**—The
 5 Under Secretary shall ensure that, subject to meeting the
 6 highest security needs on Amtrak’s entire system, stations
 7 and facilities located outside of the Northeast Corridor re-
 8 ceive an equitable share of the security funds authorized
 9 by this section.

10 (d) **AUTHORIZATION OF APPROPRIATIONS.**—

11 (1) **IN GENERAL.**—There are authorized to be
 12 appropriated to the Under Secretary of Homeland
 13 Security for Border and Transportation Security—

14 (A) \$81,900,000 for fiscal year 2007 to
 15 carry out this section; and

16 (B) \$18,400,000 for each of the fiscal
 17 years 2007 through 2011, to carry out para-
 18 graphs (6) and (7) of subsection (a).

19 (2) **AVAILABILITY.**—Amounts appropriated pur-
 20 suant to this subsection shall remain available until
 21 expended.

22 **SEC. 230. FREIGHT AND PASSENGER RAIL SECURITY UP-**
 23 **GRADES.**

24 (a) **SECURITY IMPROVEMENT GRANTS.**—The Under
 25 Secretary of Homeland Security for Border and Transpor-

1 tation Security is authorized to make grants to freight
 2 railroads, the Alaska Railroad, hazardous materials ship-
 3 pers, owners of rail cars used in the transportation of haz-
 4 ardous materials, universities, colleges and research cen-
 5 ters, State and local governments (for passenger facilities
 6 and infrastructure not owned by Amtrak), and, through
 7 the Secretary of Transportation, to Amtrak, for full or
 8 partial reimbursement of costs incurred in the conduct of
 9 activities to prevent or respond to acts of terrorism, sabo-
 10 tage, or other intercity passenger rail and freight rail secu-
 11 rity threats, including—

12 (1) security and redundancy for critical commu-
 13 nications, computer, and train control systems essen-
 14 tial for secure rail operations;

15 (2) accommodation of cargo or passenger
 16 screening equipment at the United States-Mexico
 17 border or the United States-Canada border;

18 (3) the security of hazardous material transpor-
 19 tation by rail;

20 (4) secure intercity passenger rail stations,
 21 trains, and infrastructure;

22 (5) structural modification or replacement of
 23 rail cars transporting extremely hazardous materials
 24 (as defined in section 242) to improve their resist-
 25 ance to acts of terrorism;

1 (6) employee security awareness, preparedness,
2 passenger evacuation, and emergency response train-
3 ing;

4 (7) public security awareness campaigns for
5 passenger train operations;

6 (8) the sharing of intelligence and information
7 about security threats;

8 (9) train tracking and interoperable commu-
9 nications systems that are coordinated to the max-
10 imum extent possible;

11 (10) the hiring of additional police and security
12 officers, including canine units; and

13 (11) other improvements recommended by the
14 reports submitted under subsections (c) and (d) of
15 section 221, including infrastructure, facilities, and
16 equipment upgrades.

17 (b) ACCOUNTABILITY.—The Under Secretary shall
18 adopt necessary procedures, including audits, to ensure
19 that grants made under this section are expended in ac-
20 cordance with the purposes of this subtitle and the prior-
21 ities and other criteria developed by the Under Secretary.

22 (c) EQUITABLE ALLOCATION.—The Under Secretary
23 shall equitably distribute the funds authorized by this sec-
24 tion, taking into account geographic location, and shall en-
25 courage non-Federal financial participation in awarding

1 grants. With respect to grants for passenger rail security,
 2 the Under Secretary shall also take into account passenger
 3 volume and whether a station is used by commuter rail
 4 passengers as well as intercity rail passengers.

5 (d) CONDITIONS.—The Secretary of Transportation
 6 may not disburse funds to Amtrak under subsection (a)
 7 unless Amtrak meets the conditions set forth in section
 8 229(b).

9 (e) ALLOCATION BETWEEN RAILROADS AND OTH-
 10 ERS.—Unless as a result of the assessment required by
 11 section 201(a) the Under Secretary of Homeland Security
 12 for Border and Transportation Security determines that
 13 critical rail transportation security needs require reim-
 14 bursement in greater amounts to any eligible entity, no
 15 grants under this section may be made—

16 (1) in excess of \$65,000,000 to Amtrak; or
 17 (2) in excess of \$100,000,000 for the purposes
 18 described in paragraphs (3) and (5) of subsection
 19 (a).

20 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 21 are authorized to be appropriated to the Under Secretary
 22 of Homeland Security for Border and Transportation Se-
 23 curity \$350,000,000 for fiscal year 2007 to carry out this
 24 section. Amounts appropriated pursuant to this subsection
 25 shall remain available until expended.

1 **SEC. 231. RAIL SECURITY RESEARCH AND DEVELOPMENT.**

2 (a) ESTABLISHMENT OF RESEARCH AND DEVELOP-
3 MENT PROGRAM.—The Under Secretary of Homeland Se-
4 curity for Border and Transportation Security, in conjunc-
5 tion with the Secretary of Transportation, shall carry out
6 a research and development program for the purpose of
7 improving freight and intercity passenger rail security that
8 may include research and development projects to—

9 (1) reduce the vulnerability of passenger trains,
10 stations, and equipment to explosives and hazardous
11 chemical, biological, and radioactive substances;

12 (2) test new emergency response techniques and
13 technologies;

14 (3) develop improved freight technologies, in-
15 cluding—

16 (A) technologies for sealing rail cars;

17 (B) automatic inspection of rail cars;

18 (C) communication-based train controls; and

19 (D) emergency response training;

20 (4) test wayside detectors that can detect tam-
21 pering with railroad equipment;

22 (5) support enhanced security for the transpor-
23 tation of hazardous materials by rail, including—

24 (A) technologies to detect a breach in a
25 tank car and transmit information about the in-
26 tegrity of tank cars to the train crew;

1 (B) research to improve tank car integrity,
 2 with a focus on tank cars that carry extremely
 3 hazardous materials (as defined in section 242);
 4 and

5 (C) techniques to transfer hazardous mate-
 6 rials from rail cars that are damaged or other-
 7 wise represent an unreasonable risk to human
 8 life or public safety; and

9 (6) other projects recommended in reports sub-
 10 mitted under section 221.

11 (b) COORDINATION WITH OTHER RESEARCH INITIA-
 12 TIVES.—

13 (1) IN GENERAL.—The Under Secretary of
 14 Homeland Security for Border and Transportation
 15 Security shall ensure that the research and develop-
 16 ment program authorized by this section is coordi-
 17 nated with other research and development initia-
 18 tives at the Department of Homeland Security and
 19 the Department of Transportation.

20 (2) AGREEMENT FOR IMPLEMENTATION.—The
 21 Under Secretary of Homeland Security for Border
 22 and Transportation Security shall carry out any re-
 23 search and development project authorized by this
 24 section through a reimbursable agreement with the

1 Secretary of Transportation if the Secretary of
 2 Transportation—

3 (A) is already sponsoring a research and
 4 development project in a similar area; or

5 (B) has a unique facility or capability that
 6 would be useful in carrying out the project.

7 (c) ACCOUNTABILITY.—The Under Secretary shall
 8 adopt necessary procedures, including audits, to ensure
 9 that grants made under this section are expended in ac-
 10 cordance with the purposes of this Act and the priorities
 11 and other criteria developed by the Under Secretary.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 13 are authorized to be appropriated to the Under Secretary
 14 of Homeland Security for Border and Transportation Se-
 15 curity \$50,000,000 in each of fiscal years 2007 and 2008
 16 to carry out this section. Amounts appropriated pursuant
 17 to this subsection shall remain available until expended.

18 **SEC. 232. WELDED RAIL AND TANK CAR SAFETY IMPROVE-**
 19 **MENTS.**

20 (a) TRACK STANDARDS.—Not later than 90 days
 21 after the date of enactment of this Act, the Administrator
 22 of the Federal Railroad Administration shall—

23 (1) require each track owner using continuous
 24 welded rail track to include procedures (in its proce-
 25 dures filed with the Administration under section

1 213.119 of title 49, Code of Federal Regulations) to
2 improve the identification of cracks in rail joint bars;

3 (2) instruct Administration track inspectors to
4 obtain copies of the most recent continuous welded
5 rail programs of each railroad within the inspectors'
6 areas of responsibility and require that inspectors
7 use those programs when conducting track inspec-
8 tions; and

9 (3) establish a program to periodically review
10 continuous welded rail joint bar inspection data from
11 railroads and Administration track inspectors and,
12 whenever the Administrator determines that it is
13 necessary or appropriate, require railroads to in-
14 crease the frequency or improve the methods of in-
15 spection of joint bars in continuous welded rail.

16 (b) TANK CAR STANDARDS.—The Administrator of
17 the Federal Railroad Administration shall—

18 (1) not later than 1 year after the date of en-
19 actment of this Act, validate the predictive model it
20 is developing to quantify the relevant dynamic forces
21 acting on railroad tank cars under accident condi-
22 tions; and

23 (2) not later than 18 months after the date of
24 enactment of this Act, initiate a rulemaking to de-

1 velop and implement appropriate design standards
2 for pressurized tank cars.

3 (c) OLDER TANK CAR IMPACT RESISTANCE ANAL-
4 YSIS AND REPORT.—Not later than 2 years after the date
5 of enactment of this Act, the Administrator of the Federal
6 Railroad Administration shall—

- 7 (1) conduct a comprehensive analysis to deter-
8 mine the impact resistance of the steels in the shells
9 of pressure tank cars constructed before 1989; and
- 10 (2) submit to the Committee on Commerce,
11 Science, and Transportation of the Senate and the
12 Committee on Transportation and Infrastructure of
13 the House of Representatives a report with rec-
14 ommendations for measures to eliminate or mitigate
15 the risk of catastrophic failure.

16 **SEC. 233. NORTHERN BORDER RAIL PASSENGER REPORT.**

17 Not later than 180 days after the date of enactment
18 of this Act, the Under Secretary of Homeland Security
19 for Border and Transportation Security, in consultation
20 with the heads of other appropriate Federal departments
21 and agencies and the National Railroad Passenger Cor-
22 poration, shall submit to the Committee on Commerce,
23 Science, and Transportation of the Senate and the Com-
24 mittee on Transportation and Infrastructure of the House
25 of Representatives a report that contains—

1 (1) a description of the system for screening
2 passengers and baggage on passenger rail service be-
3 tween the United States and Canada;

4 (2) an assessment of the program to provide
5 preclearance of airline passengers between the
6 United States and Canada as outlined in “The
7 Agreement on Air Transport Preclearance between
8 the Government of Canada and the Government of
9 the United States of America”, dated January 18,
10 2001;

11 (3) an assessment of the program to provide
12 preclearance of freight railroad traffic between the
13 United States and Canada as outlined in the “Dec-
14 laration of Principle for the Improved Security of
15 Rail Shipments by Canadian National Railway and
16 Canadian Pacific Railway from Canada to the
17 United States”, dated April 2, 2003;

18 (4) information on progress by the Department
19 of Homeland Security and other Federal agencies to-
20 wards finalizing a bilateral protocol with Canada
21 that would provide for preclearance of passengers on
22 trains operating between the United States and Can-
23 ada;

24 (5) a description of legislative, regulatory,
25 budgetary, or policy barriers within the United

1 States Government to providing prescreened pas-
 2 senger lists for rail passengers traveling between the
 3 United States and Canada to the Department of
 4 Homeland Security;

5 (6) a description of the position of the Govern-
 6 ment of Canada and relevant Canadian agencies
 7 with respect to preclearance of such passengers; and

8 (7) a draft of any changes in Federal law nec-
 9 essary to provide for prescreening of such pas-
 10 sengers and providing prescreened passenger lists to
 11 the Department of Homeland Security.

12 **SEC. 234. WHISTLEBLOWER PROTECTION PROGRAM.**

13 (a) IN GENERAL.—Subchapter I of chapter 201 of
 14 title 49, United States Code, is amended by inserting after
 15 section 20115 the following:

16 **“§ 20116. Whistleblower protection for rail security**
 17 **matters**

18 “(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail
 19 carrier engaged in interstate or foreign commerce may dis-
 20 charge a railroad employee or otherwise discriminate
 21 against a railroad employee because the employee (or any
 22 person acting under a request of the employee)—

23 “(1) provided, caused to be provided, or is
 24 about to provide or cause to be provided, to the em-

1 ployer or the Federal Government information relat-
2 ing to a perceived threat to security;

3 “(2) provided, caused to be provided, or is
4 about to provide or cause to be provided, testimony
5 before Congress or at any Federal or State pro-
6 ceeding regarding a perceived threat to security; or

7 “(3) refused to violate or assist in the violation
8 of any law, rule, or regulation related to rail secu-
9 rity.

10 “(b) DISPUTE RESOLUTION.—A dispute, grievance,
11 or claim arising under this section is subject to resolution
12 under section 3 of the Railway Labor Act (45 U.S.C. 153).
13 In a proceeding by the National Railroad Adjustment
14 Board, a division or delegate of the Board, or another
15 board of adjustment established under such section to re-
16 solve the dispute, grievance, or claim, the proceeding shall
17 be expedited and the dispute, grievance, or claim shall be
18 resolved not later than 180 days after it is filed. If the
19 violation is a form of discrimination that does not involve
20 discharge, suspension, or another action affecting pay, and
21 no other remedy is available under this subsection, the
22 Board, division, delegate, or other board of adjustment
23 may award the employee reasonable damages, including
24 punitive damages, of not more than \$20,000.

1 “(c) PROCEDURAL REQUIREMENTS.—Except as pro-
 2 vided in subsection (b), the procedure set forth in section
 3 42121(b)(2)(B), including the burdens of proof, applies to
 4 any complaint brought under this section.

5 “(d) ELECTION OF REMEDIES.—An employee of a
 6 railroad carrier may not seek protection under both this
 7 section and another provision of law for the same allegedly
 8 unlawful act of the carrier.

9 “(e) DISCLOSURE OF IDENTITY.—

10 “(1) Except as provided in paragraph (2), or
 11 with the written consent of the employee, the Sec-
 12 retary of Transportation may not disclose the name
 13 of an employee of a railroad carrier who has pro-
 14 vided information about an alleged violation of this
 15 section.

16 “(2) The Secretary shall disclose to the Attor-
 17 ney General the name of an employee described in
 18 paragraph (1) if the matter is referred to the Attor-
 19 ney General for enforcement.”.

20 (b) CONFORMING AMENDMENT.—The chapter anal-
 21 ysis for chapter 201 of title 49, United States Code, is
 22 amended by inserting after the item relating to section
 23 20115 the following:

“20116. Whistleblower protection for rail security matters.”.

Subtitle C—Transportation of Hazardous Materials by Rail

SEC. 241. FINDINGS.

Congress makes the following findings:

(1) Congress has specifically given the Department of Homeland Security, working in conjunction with the Department of Transportation and other Federal agencies, the primary authority for the security of the United States transportation sector, including passenger and freight rail.

(2) This authority includes the responsibility to protect American citizens from terrorist incidents related to the transport by rail of extremely hazardous materials.

(3) Federal agencies have determined that hazardous materials can be used as tools of destruction and terror and that extremely hazardous materials are particularly vulnerable to sabotage or misuse during transport.

(4) The Federal Bureau of Investigation and the Central Intelligence Agency have found evidence suggesting that chemical tankers used to transport and store extremely hazardous chemicals have been targeted by terrorist groups.

1 (5) Rail shipments of extremely hazardous ma-
2 terials are often routed through highly attractive
3 targets and densely populated areas, including with-
4 in a few miles of the White House and United
5 States Capitol.

6 (6) According to security experts, certain ex-
7 tremely hazardous materials present a mass casualty
8 terrorist potential rivaled only by improvised nuclear
9 devices, certain acts of bioterrorism, and the collapse
10 of large occupied buildings.

11 (7) A report by the Chlorine Institute found
12 that a 90-ton rail tanker, if successfully targeted by
13 an explosive device, could cause a catastrophic re-
14 lease of an extremely hazardous material, creating a
15 toxic cloud 40 miles long and 10 miles wide.

16 (8) The Environmental Protection Agency esti-
17 mates that in an urban area a toxic cloud could ex-
18 tend for 14 miles.

19 (9) The United States Naval Research Labora-
20 tories concluded that a toxic plume of this type, cre-
21 ated while there was a public event on the National
22 Mall, could kill or injure up to 100,000 people in
23 less than 30 minutes.

24 (10) According to security experts, rail ship-
25 ments of extremely hazardous materials are particu-

1 larly vulnerable and dangerous, however the Federal
2 Government has made no material reduction in the
3 inherent vulnerability of hazardous chemical targets
4 inside the United States.

5 (11) While the safety record related to rail
6 shipments of hazardous materials is very good, re-
7 cent accidental releases of extremely hazardous ma-
8 terials in rural South Carolina and San Antonio,
9 Texas, demonstrate the fatal danger posed by ex-
10 tremely hazardous materials.

11 (12) Security experts have determined that re-
12 routing these rail shipments is the only way to im-
13 mediately eliminate this danger in high threat areas,
14 which currently puts hundreds of thousands of peo-
15 ple at risk.

16 (13) Security experts have determined that the
17 primary benefit of re-routing the shipment of ex-
18 tremely hazardous materials is a reduction in the
19 number of people that would be exposed to the dead-
20 ly impact of the release due to an attack, and the
21 principal cost would be the additional operating ex-
22 pense associated with possible increased mileage for
23 the shipment of extremely hazardous materials.

1 (14) Less than 5 percent of all hazardous mate-
 2 rials shipped by rail will meet the definition of ex-
 3 tremely hazardous materials under this Act.

4 **SEC. 242. DEFINITIONS.**

5 In this subtitle, the following definitions apply:

6 (1) EXTREMELY HAZARDOUS MATERIAL.—The
 7 term “extremely hazardous material” means any
 8 chemical, toxin, or other material being shipped or
 9 stored in sufficient quantities to represent an acute
 10 health threat or have a high likelihood of causing in-
 11 juries, casualties, or economic damage if successfully
 12 targeted by a terrorist attack, including materials
 13 that—

14 (A) are—

- 15 (i) toxic by inhalation;
- 16 (ii) extremely flammable; or
- 17 (iii) highly explosive;

18 (B) contain high level nuclear waste; or

19 (C) are otherwise designated by the Sec-
 20 retary as extremely hazardous.

21 (2) HIGH THREAT CORRIDOR.—

22 (A) IN GENERAL.—The term “high threat
 23 corridor” means a geographic area that has
 24 been designated by the Secretary as particularly

1 vulnerable to damage from the release of ex-
2 tremely hazardous materials, including—

3 (i) large populations centers;

4 (ii) areas important to national secu-
5 rity;

6 (iii) areas that terrorists may be par-
7 ticularly likely to attack; or

8 (iv) any other area designated by the
9 Secretary as vulnerable to damage from
10 the rail shipment or storage of extremely
11 hazardous materials.

12 (B) OTHER AREAS.—

13 (i) IN GENERAL.—Any city that is not
14 designated as a high threat corridor under
15 subparagraph (A) may file a petition with
16 the Secretary to be so designated.

17 (ii) PROCEDURE.—The Secretary shall
18 establish, by rule, regulation, or order, pro-
19 cedures for petitions under clause (i), in-
20 cluding—

21 (I) designating the local official
22 eligible to file a petition;

23 (II) establishing the criteria a
24 city shall include in a petition;

1 (III) allowing a city to submit
2 evidence supporting its petition; and

3 (IV) requiring the Secretary to
4 rule on the petition not later than 60
5 days after the date of submission of
6 the petition.

7 (iii) NOTICE.—The Secretary’s deci-
8 sion regarding any petition under clause (i)
9 shall be communicated to the requesting
10 city, the Governor of the State in which
11 the city is located, and the Senators and
12 Members of the House of Representatives
13 that represent the State in which the city
14 is located.

15 (3) SECRETARY.—The term “Secretary” means
16 the Secretary of Homeland Security or the Sec-
17 retary’s designee.

18 (4) STORAGE.—The term “storage” means any
19 temporary or long-term storage of extremely haz-
20 ardous materials in rail tankers or any other me-
21 dium utilized to transport extremely hazardous ma-
22 terials by rail.

1 **SEC. 243. REGULATIONS FOR TRANSPORT OF EXTREMELY**
2 **HAZARDOUS MATERIALS.**

3 (a) PURPOSES OF REGULATIONS.—The regulations
4 issued under this section shall establish a national, risk-
5 based policy for extremely hazardous materials trans-
6 ported by rail or being stored. To the extent the Secretary
7 determines appropriate, the regulations issued under this
8 section shall be consistent with other Federal, State, and
9 local regulations and international agreements relating to
10 shipping or storing extremely hazardous materials.

11 (b) ISSUANCE OF REGULATIONS.—Not later than 90
12 days after the date of enactment of this Act, the Secretary
13 shall issue, after notice and opportunity for public com-
14 ment, regulations concerning the rail shipment and stor-
15 age of extremely hazardous materials by owners and oper-
16 ators of railroads. In developing such regulations, the Sec-
17 retary shall consult with other Federal, State, and local
18 government entities, security experts, representatives of
19 the hazardous materials rail shipping industry, labor
20 unions representing persons who work with hazardous ma-
21 terials in the rail shipping industry, and other interested
22 persons, including private sector interest groups.

23 (c) REQUIREMENTS.—The regulations issued under
24 this section shall—

25 (1) include a list of the high threat corridors
26 designated by the Secretary;

1 (2) contain the criteria used by the Secretary to
2 determine whether an area qualifies as a high threat
3 corridor;

4 (3) include a list of extremely hazardous mate-
5 rials;

6 (4) establish protocols for owners and operators
7 of railroads that ship extremely hazardous materials
8 regarding notifying all governors, mayors, and other
9 designated officials and local emergency responders
10 in a high threat corridor of the quantity and type of
11 extremely hazardous materials that are transported
12 by rail through the high threat corridor;

13 (5) require reports regarding the transport by
14 railroad of extremely hazardous materials by the
15 Secretary to local governmental officials designated
16 by the Secretary, and Local Emergency Planning
17 Committees, established under the Emergency Plan-
18 ning and Community Right to Know Act of 1986
19 (42 U.S.C. 11001 et seq.);

20 (6) establish protocols for the coordination of
21 Federal, State, and local law enforcement authorities
22 in creating a plan to respond to a terrorist attack,
23 sabotage, or accident involving a rail shipment of ex-
24 tremely hazardous materials that causes the release
25 of such materials;

1 (7) require that any rail shipment containing
2 extremely hazardous materials be re-routed around
3 any high threat corridor; and

4 (8) establish standards for the Secretary to
5 grant exceptions to the re-routing requirement under
6 paragraph (7).

7 (d) HIGH THREAT CORRIDORS.—

8 (1) IN GENERAL.—The criteria under sub-
9 section (c)(2) for determining whether an area quali-
10 fies as a high threat corridor may be the same cri-
11 teria used for the distribution of funds under the
12 Urban Area Security Initiative Program.

13 (2) INITIAL LIST.—If the Secretary is unable to
14 complete the review necessary to determine which
15 areas should be designated as high threat corridors
16 within 90 days after the date of enactment of this
17 Act, the initial list shall be the cities that received
18 funding under the Urban Area Security Initiative
19 Program in fiscal year 2004.

20 (e) EXTREMELY HAZARDOUS MATERIALS LIST.—If
21 the Secretary is unable to complete the review necessary
22 to determine which materials should be designated ex-
23 tremely hazardous materials under subsection (c)(3) with-
24 in 90 days of the date of enactment of this Act, the initial
25 list shall include—

1 (1) explosives classified as Class 1, Division 1.1,
2 or Class 1, Division 1.2, under section 173.2 of title
3 49, Code of Federal Regulations, in a quantity
4 greater than 500 kilograms;

5 (2) flammable gasses classified as Class 2, Divi-
6 sion 2.1, under section 173.2 of title 49, Code of
7 Federal Regulations, in a quantity greater than
8 10,000 liters;

9 (3) poisonous gasses classified as Class 2, Divi-
10 sion 2.3, under section 173.2 of title 49, Code of
11 Federal Regulations, that are also assigned to Haz-
12 ard Zones A or B under section 173.116 of title 49,
13 Code of Federal Regulations, in a quantity greater
14 than 500 liters;

15 (4) poisonous materials, other than gasses, clas-
16 sified as Class 6, Division 6.1, under section 173.2
17 of title 49, Code of Federal Regulations, that are
18 also assigned to Hazard Zones A or B under section
19 173.116 of title 49, Code of Federal Regulations, in
20 a quantity greater than 1,000 kilograms; and

21 (5) anhydrous ammonia classified as Class 2,
22 Division 2.2, under section 173.2 of title 49, Code
23 of Federal Regulations, in a quantity greater than
24 1,000 kilograms.

25 (f) NOTIFICATION.—

1 (1) IN GENERAL.—The protocols under sub-
 2 section (c)(4) shall establish the required frequency
 3 of reporting by an owner and operator of a railroad
 4 to the Governors, Mayors, and other designated offi-
 5 cials and local emergency responders in a high
 6 threat corridor.

7 (2) REPORTS TO SECRETARY.—The protocols
 8 under subsection (c)(4) shall require owners and op-
 9 erators of railroad to make annual reports to the
 10 Secretary regarding the transportation of extremely
 11 hazardous materials, and to make quarterly updates
 12 if there has been any significant change in the type,
 13 quantity, or frequency of shipments.

14 (3) CONSIDERATIONS.—In developing protocols
 15 under subsection (c)(4), the Secretary shall consider
 16 both the security needs of the United States and the
 17 interests of State and local governmental officials.

18 (g) REPORTS.—

19 (1) FREQUENCY.—

20 (A) IN GENERAL.—The Secretary shall
 21 make an annual report to local governmental
 22 officials and Local Emergency Planning Com-
 23 mittees under subsection (c)(5).

24 (B) UPDATES.—If there has been any sig-
 25 nificant change in the type, quantity, or fre-

1 quency of rail shipments in a geographic area,
2 the Secretary shall make a quarterly update re-
3 port to local governmental officials and Local
4 Emergency Planning Committees in that geo-
5 graphic area.

6 (2) CONTENTS.—Each report made under sub-
7 section (c)(5) shall incorporate information from the
8 reports under subsection (c)(4) and shall include—

9 (A) a good-faith estimate of the total num-
10 ber of rail cars containing extremely hazardous
11 materials shipped through or stored in each
12 metropolitan statistical area; and

13 (B) if a release from a railcar carrying or
14 storing extremely hazardous materials is likely
15 to harm persons or property beyond the prop-
16 erty of the owner or operator of the railroad, a
17 risk management plan that provides—

18 (i) a hazard assessment of the poten-
19 tial effects of a release of the extremely
20 hazardous materials, including—

21 (I) an estimate of the potential
22 release quantities; and

23 (II) a determination of the down-
24 wind effects, including the potential
25 exposures to affected populations;

- 1 (ii) a program to prevent a release of
2 extremely hazardous materials, including—
3 (I) security precautions;
4 (II) monitoring programs; and
5 (III) employee training measures
6 utilized; and
7 (iii) an emergency response program
8 that provides for specific actions to be
9 taken in response to the release of an ex-
10 tremely hazardous material, including pro-
11 cedures for informing the public and Fed-
12 eral, State, and local agencies responsible
13 for responding to the release of an ex-
14 tremely hazardous material.

15 (h) TRANSPORTATION AND STORAGE OF EXTREMELY
16 HAZARDOUS MATERIALS THROUGH HIGH THREAT COR-
17 RIDORS.—

18 (1) IN GENERAL.—The standards for the Sec-
19 retary to grant exceptions under subsection (c)(8)
20 shall require a finding of special circumstances by
21 the Secretary, including that—

- 22 (A) the shipment originates in or is des-
23 tined to the high threat corridor;
24 (B) there is no practical alternate route;

1 (C) there is an unanticipated, temporary
2 emergency that threatens the lives of people in
3 the high threat corridor; or

4 (D) there would be no harm to persons or
5 property beyond the property of the owner or
6 operator of the railroad in the event of a suc-
7 cessful terrorist attack on the shipment.

8 (2) PRACTICAL ALTERNATE ROUTES.—Whether
9 a shipper must utilize an interchange agreement or
10 otherwise utilize a system of tracks or facilities
11 owned by another operator shall not be considered
12 by the Secretary in determining whether there is a
13 practical alternate route under paragraph (1)(B).

14 (3) GRANT OF EXCEPTION.—If the Secretary
15 grants an exception under subsection (c)(8)—

16 (A) the extremely hazardous material may
17 not be stored in the high threat corridor, in-
18 cluding under a leased track or rail siding
19 agreement; and

20 (B) the Secretary shall notify Federal,
21 State, and local law enforcement and first re-
22 sponder agencies (including, if applicable, tran-
23 sit, railroad, or port authority agencies) within
24 the high threat corridor.

1 **SEC. 244. SAFETY TRAINING.**

2 (a) **HOMELAND SECURITY GRANT PROGRAM.**—

3 (1) **IN GENERAL.**—The Secretary may award
4 grants to local governments and owners and opera-
5 tors of railroads to conduct training regarding safety
6 procedures for handling and responding to emer-
7 gencies involving extremely hazardous materials.

8 (2) **USE OF FUNDS.**—Grants under this sub-
9 section may be used to provide training and pur-
10 chase safety equipment for individuals who—

11 (A) transport, load, unload, or are other-
12 wise involved in the shipment of extremely haz-
13 ardous materials;

14 (B) would respond to an accident or inci-
15 dent involving a shipment of extremely haz-
16 ardous materials; and

17 (C) would repair transportation equipment
18 and facilities in the event of such an accident
19 or incident.

20 (3) **APPLICATION.**—A local government or
21 owner or operator of a railroad desiring a grant
22 under this subsection shall submit an application at
23 such time, in such manner, and accompanied by
24 such information as the Secretary may reasonably
25 establish.

1 (4) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated
3 \$100,000,000 for each of the fiscal years 2007
4 through 2011 to carry out this subsection.

5 (b) RAILWAY HAZMAT TRAINING PROGRAM.—

6 (1) PROGRAM.—Section 5116(j) of title 49,
7 United States Code, is amended by adding at the
8 end the following:

9 “(6) RAILWAY HAZMAT TRAINING PROGRAM.—

10 “(A) IN GENERAL.—In order to further
11 the purposes of subsection (b), the Secretary of
12 Transportation shall, subject to the availability
13 of funds, make grants to national nonprofit em-
14 ployee organizations with experience in con-
15 ducting training regarding the transportation of
16 hazardous materials on railways for the purpose
17 of training railway workers who are likely to
18 discover, witness, or otherwise identify a release
19 of extremely hazardous materials and to pre-
20 vent or respond appropriately to the incident.

21 “(B) DELEGATION.—The Secretary of
22 Transportation shall delegate authority for the
23 administration of the Railway Hazmat Training
24 Program to the Director of the National Insti-
25 tute of Environmental Health Sciences under

1 subsection (g). In administering the program
 2 under this paragraph, the Director of the Na-
 3 tional Institute of Environmental Health
 4 Sciences shall consult closely with the Secretary
 5 of Transportation and the Secretary of Home-
 6 land Security.”.

7 (2) AUTHORIZATION OF APPROPRIATIONS.—
 8 Section 5128 of title 49, United States Code, is
 9 amended by adding at the end the following:

10 “(g) RAILWAY HAZMAT TRAINING PROGRAM.—There
 11 are authorized to be appropriated \$10,000,000 for each
 12 of the fiscal years 2007 through 2011, to carry out section
 13 5116(j)(6).”.

14 **SEC. 245. RESEARCH AND DEVELOPMENT.**

15 (a) TRANSPORT.—

16 (1) IN GENERAL.—Not later than 90 days after
 17 the date of enactment of this Act, the Secretary
 18 shall conduct a study of the benefits and availability
 19 of technology and procedures that may be utilized
 20 to—

21 (A) reduce the likelihood of a terrorist at-
 22 tack on a rail shipment of extremely hazardous
 23 materials;

1 (B) reduce the likelihood of a catastrophic
2 release of extremely hazardous materials in the
3 event of a terrorist attack; and

4 (C) enhance the ability of first responders
5 to respond to a terrorist attack on a rail ship-
6 ment of extremely hazardous materials and
7 other required activities in the event of such an
8 attack.

9 (2) MATTERS STUDIED.—The study conducted
10 under this subsection shall include the evaluation
11 of—

12 (A) whether safer alternatives to 90-ton
13 rail tankers exist;

14 (B) the feasibility of requiring chemical
15 shippers to electronically track the movements
16 of all shipments of extremely hazardous mate-
17 rials and report this information to the Depart-
18 ment of Homeland Security on an ongoing basis
19 as such shipments are transported; and

20 (C) the feasibility of utilizing fingerprint
21 based access controls for all chemical convey-
22 ances.

23 (3) REPORTING.—Not later than 180 days after
24 the date of enactment of this Act, the Secretary
25 shall submit a report to Congress describing the

1 findings of the study conducted under this sub-
2 section, which shall include recommendations and
3 cost estimates for securing shipments of extremely
4 hazardous materials.

5 (b) PHYSICAL SECURITY.—

6 (1) IN GENERAL.—Not later than 90 days after
7 the date of enactment of this Act, the Secretary
8 shall conduct a study of the physical security meas-
9 ures available for rail shipments of extremely haz-
10 ardous materials that will reduce the risk of leakage
11 or release in the event of a terrorist attack or sabo-
12 tage.

13 (2) MATTERS STUDIED.—The study conducted
14 under this subsection shall consider the use of pas-
15 sive secondary containment of tanker valves, addi-
16 tional security force personnel, surveillance tech-
17 nologies, barriers, decoy rail cars, and methods to
18 minimize delays during shipping.

19 (3) REPORTING.—Not later than 180 days after
20 the date of enactment of this Act, the Secretary
21 shall submit a report to Congress describing the
22 findings of the study conducted under this sub-
23 section, which shall contain recommendations and
24 cost estimates for securing shipments of extremely
25 hazardous materials.

1 (c) LEASED TRACK STORAGE ARRANGEMENTS.—

2 (1) IN GENERAL.—Not later than 90 days after
3 enactment of this Act, the Secretary shall conduct a
4 study of available alternatives to storing extremely
5 hazardous materials in or on leased track facilities.

6 (2) MATTERS STUDIED.—The study conducted
7 under this subsection shall—

8 (A) evaluate the extent of the use of leased
9 track facilities and the security measures that
10 should be taken to secure leased track facilities;
11 and

12 (B) assess means to limit the consequences
13 of an attack on extremely hazardous materials
14 stored on leased track facilities to nearby com-
15 munities.

16 (3) REPORT.—Not later than 180 days after
17 the date of enactment of this Act, the Secretary
18 shall submit a report to Congress describing the
19 findings of the study conducted under this sub-
20 section, which shall contain recommendations and
21 cost estimates for securing shipments of extremely
22 hazardous materials.

23 **SEC. 246. WHISTLEBLOWER PROTECTION.**

24 (a) PROHIBITION AGAINST DISCRIMINATION.—No
25 owner or operator of a railroad may discharge or otherwise

1 discriminate against any employee with respect to com-
2 pensation, terms, conditions, or privileges of employment
3 because the employee (or any person acting under the re-
4 quest of the employee) provided information to the Sec-
5 retary, the Attorney General, or any Federal supervisory
6 agency regarding a possible violation of any provision of
7 this subtitle by the owner or operator of a railroad or any
8 director, officer, or employee of an owner or operator of
9 a railroad.

10 (b) ENFORCEMENT.—Any employee or former em-
11 ployee who believes that such employee has been dis-
12 charged or discriminated against in violation of subsection
13 (a) may file a civil action in the appropriate United States
14 district court before the end of the 2-year period beginning
15 on the date of such discharge or discrimination.

16 (c) REMEDIES.—If the district court determines that
17 a violation has occurred, the court may order the owner
18 or operator of a railroad that committed the violation to—

- 19 (1) reinstate the employee to the employee's
20 former position;
21 (2) pay compensatory damages; or
22 (3) take other appropriate actions to remedy
23 any past discrimination.

24 (d) LIMITATION.—The protections of this section
25 shall not apply to any employee who—

1 (1) deliberately causes or participates in the al-
2 leged violation of law or regulation; or

3 (2) knowingly or recklessly provides substan-
4 tially false information to the Secretary, the Attor-
5 ney General, or any Federal supervisory agency.

6 **SEC. 247. PENALTIES.**

7 (a) RIGHT OF ACTION.—

8 (1) IN GENERAL.—Any State or local govern-
9 ment may bring a civil action in a United States dis-
10 trict court for redress of injuries caused by a viola-
11 tion of this subtitle against any person (other than
12 an individual) who transports, loads, unloads, or is
13 otherwise involved in the shipping of extremely haz-
14 ardous materials by rail and who violated this sub-
15 title.

16 (2) RELIEF.—In an action under paragraph
17 (1), a State or local government may seek, for each
18 violation of this subtitle—

19 (A) an order for injunctive relief; and

20 (B) a civil penalty of not more than
21 \$1,000,000.

22 (b) ADMINISTRATIVE PENALTIES.—

23 (1) IN GENERAL.—The Secretary may issue an
24 order imposing an administrative penalty of not
25 more than \$1,000,000 for each failure by a person

(other than an individual) who transports, loads, unloads, or is otherwise involved in the shipping of extremely hazardous materials to comply with this subtitle.

(2) NOTICE AND HEARING.—Before issuing an order under paragraph (1), the Secretary shall provide the person who allegedly violated this subtitle—

(A) written notice of the proposed order;

and

(B) the opportunity to request, not later than 30 days after the date on which the person received the notice, a hearing on the proposed order.

(3) PROCEDURES.—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue regulations establishing procedures for administrative hearings and the appropriate review of penalties issued under this subsection, including establishing deadlines.

Subtitle D—Chemical Plant Security

SEC. 261. PLANT SECURITY GRANTS.

There are authorized to be appropriated \$15,000,000 for each of fiscal years 2007 through 2011, to the Sec-

1 retary of Homeland Security to make grants for improving
2 the security of chemical plants.

3 **Subtitle E—Seaport Protection**

4 **SEC. 281. FINDINGS.**

5 Congress makes the following findings:

6 (1) The United States port system is a vital ar-
7 tery of the economy of the United States. Almost 95
8 percent of all foreign trade passes through 1 or more
9 of the 361 ports in the United States. Such seaports
10 handle more than 2,000,000,000 tons of domestic
11 and international freight each year of which has a
12 value of more than \$740,000,000. The shipment of
13 cargo in vessels creates employment for 13,000,000
14 people within the United States.

15 (2) The United States Coast Guard has esti-
16 mated that, given this tremendous commerce, a ter-
17 rorist attack shutting down a major port in the
18 United States would have a \$60,000,000 impact on
19 the United States economy during the first 30 days
20 after such an attack.

21 (3) Although 6,000,000 cargo containers, each
22 a possible hiding place for a bomb or other weapon,
23 are off-loaded at ports in the United States each
24 year, less than $\frac{1}{10}$ of these containers are physically
25 inspected. A container ship can carry as many as

1 3,000 containers, each one weighing up to 45,000
 2 pounds, hundreds of which may be off-loaded at a
 3 port.

4 (4) The United States Coast Guard has esti-
 5 mated that the maritime security requirements set
 6 for ports by the Maritime Transportation Security
 7 Act of 2002 (Public Law 107–295; 116 Stat. 2064),
 8 which are critical to protecting United States ports
 9 from a nuclear terrorist attack, will cost
 10 \$5,400,000,000 to implement over a 10-year period.

11 **SEC. 282. PORT SECURITY GRANT FUNDING.**

12 Section 70107(h) of title 46, United States Code, is
 13 amended to read as follows:

14 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
 15 are authorized to be appropriated to the Secretary to carry
 16 out subsections (a) through (g) \$1,000,000,000 for each
 17 of the fiscal years 2007 through 2011.”.

18 **Subtitle F—Bag Screening**

19 **SEC. 291. CHECKED BAG SCREENING.**

20 There are authorized to be appropriated
 21 \$200,000,000 for each of the fiscal years 2007 through
 22 2011, to the Transportation Security Administration to
 23 ensure adequate screening of all checked passenger lug-
 24 gage and cargo on commercial flights.

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